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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/956,980	09/21/2001	Ashley I. Bush	0609.4550001/JAG/FRC	6687

26111 7590 05/09/2003

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WASHINGTON, DC 20005

EXAMINER

WEDDINGTON, KEVIN E

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 05/09/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/956,980

Applicant(s)

Bush et al.

Examiner

Kevin E. Weddington

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 18, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10-12, 25-27, 40-42, and 58-63 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-12, 25-27, 40-42, and 58-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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CLAIMS 10-12, 25-27, 40-42 AND 58-63 ARE PRESENTED FOR EXAMINATION.

APPLICANTS' AMENDMENT FILED DECEMBER 18, 2002 HAS BEEN RECEIVED AND ENTERED. ACCORDINGLY, THE REJECTIONS MADE UNDER 35 U.S.C. 112, SECOND PARAGRAPH AND 35 U.S.C. 103 AS SET FORTH IN THE PREVIOUS OFFICE ACTION AT PAGES 2-4 ARE HEREBY WITHDRAWN.

***INVENTORSHIP***

IN VIEW OF THE PAPERS FILED OCTOBER 22, 2002, IT HAS BEEN FOUND THAT THIS NONPROVISIONAL APPLICATION, AS FILED, THROUGH ERROR AND WITHOUT DECEPTIVE INTENT, IMPROPERLY SET FORTH THE INVENTORSHIP, AND ACCORDINGLY, THIS APPLICATION HAS BEEN CORRECTED IN COMPLIANCE WITH 37 CFR 1.48(A). THE INVENTORSHIP OF THIS APPLICATION HAS BEEN CHANGED BY ADDING ROBERT CHERNY.

THE APPLICATION WILL BE FORWARDED TO THE OFFICE OF INITIAL PATENT EXAMINATION (OIPE) FOR ISSUANCE OF A CORRECTED FILING RECEIPT, AND CORRECTION OF THE FILE JACKET AND PTO PALM DATA TO REFLECT THE INVENTORSHIP AS CORRECTED.

***DOUBLE PATENTING***

A REJECTION BASED ON DOUBLE PATENTING OF THE "SAME INVENTION" TYPE FINDS ITS SUPPORT IN THE LANGUAGE OF 35 U.S.C. 101 WHICH STATES THAT "WHOEVER INVENTS OR DISCOVERS ANY NEW AND USEFUL PROCESS ... MAY OBTAIN A PATENT THEREFOR ..." (EMPHASIS ADDED). THUS, THE TERM "SAME INVENTION," IN THIS CONTEXT,

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MEANS AN INVENTION DRAWN TO IDENTICAL SUBJECT MATTER. SEE *MILLER V. EAGLE MFG. Co.*, 151 U.S. 186 (1894); *IN RE OCKERT*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); AND *IN RE VOGEL*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A STATUTORY TYPE (35 U.S.C. 101) DOUBLE PATENTING REJECTION CAN BE OVERCOME BY CANCELING OR AMENDING THE CONFLICTING CLAIMS SO THEY ARE NO LONGER COEXTENSIVE IN SCOPE. THE FILING OF A TERMINAL DISCLAIMER CANNOT OVERCOME A DOUBLE PATENTING REJECTION BASED UPON 35 U.S.C. 101.

CLAIMS 10-12, 25-27 AND 58-61 ARE REJECTED UNDER 35 U.S.C. 101 AS CLAIMING THE SAME INVENTION AS THAT OF CLAIMS 1, 2, 10 AND 11 OF PRIOR U.S. PATENT No. 6,323,218.

THE PRESENT APPLICATION AND THE PATENTED APPLICATION ARE CLAIMING THE SAME INVENTION: A METHOD OF TREATING AMYLOIDOSIS IN A SUBJECT WITH A COMBINATION OF A CHELATOR AND CLIOQUINOL. NOTE THE PRESENT APPLICATION TEACHES A CHELATOR SPECIFIC FOR COPPER, SUCH AS BATHCUPROINE. THE PATENTED APPLICATION TEACHES A METAL CHELATOR IS SELECTED FROM THE GROUP CONSISTING OF: BATHCUPROINE, ETC. CLEARLY, THE PRESENT APPLICATION READS ON THE PATENTED APPLICATION.

THIS IS A DOUBLE PATENTING REJECTION.

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***CLAIM REJECTIONS - 35 U.S.C. § 102***

THE FOLLOWING IS A QUOTATION OF THE APPROPRIATE PARAGRAPHS OF 35 U.S.C. 102 THAT FORM THE BASIS FOR THE REJECTIONS UNDER THIS SECTION MADE IN THIS OFFICE ACTION:

A PERSON SHALL BE ENTITLED TO A PATENT UNLESS -

(A) THE INVENTION WAS KNOWN OR USED BY OTHERS IN THIS COUNTRY, OR PATENTED OR DESCRIBED IN A PRINTED PUBLICATION IN THIS OR A FOREIGN COUNTRY, BEFORE THE INVENTION THEREOF BY THE APPLICANT FOR A PATENT.

CLAIMS 40-42, 62 AND 63 ARE REJECTED UNDER 35 U.S.C. 102(A) AS BEING ANTICIPATED BY CROW ET AL. (A).

CROW ET AL. TEACH PHARMACEUTICAL COMPOSITIONS COMPRISING BATHOCUPROINE (SEE THE ABSTRACT). NOTE PARTICULARLY CLAIM 7 WHICH STATES A PHARMACEUTICAL COMPOSITION COMPRISING BATHOCUPROINE AND A PHARMACEUTICALLY ACCEPTABLE CARRIER. CLEARLY, THE CITED REFERENCE READS ON THE APPLICANTS' INSTANT INVENTION, A CHELATOR SPECIFIC FOR COPPER (BATHOCUPROINE) WITH ONE OR MORE PHARMACEUTICALLY ACCEPTABLE CARRIERS OR DILUENTS. CLEARLY, THE CITED REFERENCE ANTICIPATES THE APPLICANTS' INSTANT INVENTION, THEREFORE, THE INSTANT INVENTION IS UNPATENTABLE.

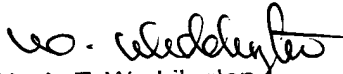
CLAIMS 40-42, 62 AND 63 ARE NOT ALLOWED.

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ANY INQUIRY CONCERNING THIS COMMUNICATION OR EARLIER COMMUNICATIONS  
FROM THE EXAMINER SHOULD BE DIRECTED TO EXAMINER K. WEDDINGTON WHOSE  
TELEPHONE NUMBER IS (703) 308-1235

  
Kevin E. Weddington  
Primary Examiner  
Art Unit 1614

K. WEDDINGTON

MAY 4, 2003